HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26543 OF 2006

Between:

G. Rami Reddy

…Petitioner

AND

The Government of Andhra Pradesh,
Rep., by Director, School Education,
A.P., Hyderabad and four others

...Respondents

: O R D E R :

Counsel for the petitioner : Shri P. Sridhar

Counsel for respondent Nos.1 and 2: Government Pleader for School Education

Counsel for respondent No.4 : Shri B. Vijaya Bhasker

23rd March, 2007

Per G.S.SINGHVI, CJ

The petitioner, who is an agriculturist by profession and is permanent resident of Choppadandi Village and Mandal, Karimnagar District, has filed this petition in public interest for stopping the construction of shopping complex in the area meant for playground of the Mandal Parishad Primary School, Choppadandi, Karimnagar (hereinafter referred to as 'the school').

The school in question is situated over an area of Ac.4-34 gts. comprised in Survey No.21 of Village Choppadandi. It was established about 80 years ago. The land abutting the building of the school is used by the students as playground. In the year 2005, the School Development Committee (respondent No.4), which is headed by the Sarpanch of the village, decided to construct shopping complex in the area meant for playground. A representation to this effect was made to District Educational Officer, Karimnagar (respondent No.2), who forwarded the same to the Director of School Education. The latter rejected similar proposal made by District Educational Officer, Mahabubnagar and communicated his decision vide letter Rc.No.928/B4-1/03-1 dated 20-4-2005 to all the District Educational Officers and the Regional Joint Directors. The relevant extracts of letter dated 20-4-2005 are reproduced below:

> "The attention of all the District Educational Officers and the Regional Joint Director of School Educations in the State is invited to the references cited and they are informed that several incidences of construction of shopping complexes by private persons / school Education Committees in the premises of Education Institutions are coming to the notice of the Director of School Education.
>
> In this connection, they are informed that the construction of shopping complexes in the school premises not only reduced the play area and hindrance further extension of the existing buildings, but also creates a nuisance to the teachers as well as to the students, especially women and girls. The intolerable nuisance and noise in

addition to huge public gatherings at shopping complexes may coerce the students as well as teachers to feel scared and perilous. Indeed, the serene and unruffled premises of the school may enhance educational standards as well as intellectual strengths of the students. Besides, the playground in educational institutions is helpful in development of physical and moral strength of the students. Therefore, the rules provide certain norms for school buildings, land and play area.

With the above intention, Government under Rule-22(33) of G.O.Ms.No.524, Education dt.20-12-1998 have clearly mentioned that "the premises of the institution or building or playground or vacant site belonging to the institution shall be used only for the purpose of conducting the institutions activities only." Hence, the construction of shopping complexes in the premises of the educational institution is against Education Rules issued under Act 1 of 1982.

In view of the above rule position, the request of the District Educational Officer, Mahabubnagar are hereby rejected.

Further, all the District Educational Officers / Regional Joint Director of School Educations / Principals IASEs, CTEs and DIETs in the State are hereby instructed not to entertain any such illegitimate construction in the school premises under all managements including compliance report.

If any incidence of involvement of officials of this department in such activities comes to the notice of the undersigned, suitable disciplinary action will be taken against them."

This was reiterated vide letter No.3049/B4-3/2006, dated 5-10-2006 sent by the Director of School Education to respondent No.4 and Head Master of the school (respondent No.5). Despite this, respondent No.5 sent letter No.25/2006, dated 6-11-2006 to Panchayat Secretary, Choppadandi Gram Panchayat for grant of permission to construct the shopping complex. The Panchayat Secretary did not oblige respondent No.5 and declared that the construction of the shopping complex is illegal. This is evident from the contents of letter No.A1/GPC/2006, dated 21-11-2006, the relevant portions of which are reproduced below:

"With reference cited above, the U.P.S. School, Head Master of

Choppadandi village hereby inform that, in the UPD School premises shopping complex constructions with reference No.1 application submitted. In this, in UPS School grounds for playground situated, and the Director of School Education order passed shall stop the illegal constructions in this, even though, the constructions were continuing. To stop construction works the Head Masters, ZPSS objections submitted referred above.

Hence, Head Master of UPS School, Choppadandi is hereby order that the illegal shopping complex constructions in the primary school premises shall stop immediately."

Notwithstanding the rejection of the proposal made by them for construction of shopping complex in the playground area, respondent Nos. 4 and 5 started construction. Thereupon, the villagers submitted complaint dated 30-11-2006 to District Collector, Karimnagar. Chief Executive Officer, District Education Parishad, Karimnagar also sent letter dated 12-12-2006 to the Superintendent of Police, Karimnagar for taking legal action against the persons responsible for raising construction.

Having failed to ensure cessation of the construction activity undertaken by respondent Nos.4 and 5, the petitioner filed this petition for restraining respondent Nos.4 and 5 from constructing the shopping complex in the area earmarked for playground. He has pleaded that if the shopping complex is allowed to be constructed, the students of the school will be deprived of the playground for all times to come. He has alleged mala fides against respondent Nos.4 and 5 and averred that the action taken by them to construct the shopping complex is liable to be nullified because it will be highly detrimental to the student community. He has relied on the Rules framed by the State Government vide G.O.Ms.No.524, Education, dated 20-12-1998 and averred that respondent Nos.4 and 5 cannot raise construction in violation of the prohibition imposed by the Director of School Education. In paragraphs 7, 9, 10 and 11 of his affidavit, the petitioner has averred as under:

7. The petitioner further learnt that even the 1st respondent refused to approve the construction of shopping complexes in the premises of educational institutions, more specifically in the premises of the subject school, vide his proceedings No.3049/B4-3/2006, dated 05.10.06. It was further learnt that the said proceeding itself was issued based on an order of the Division Bench of this Hon'ble Court in W.P.No.3074/04, dt.12.07.04 which related to the construction of multi-storied commercial complex in the Government Junior College for Girls, Karimnagar. My enquiries further revealed that way back, by a proceedings in Rc.No.928/B4-1/03-1, dt.20.04.05, the Director of School Education had categorically put all schools on notice including the subordinate officers under the Director of School Education, that no such constructions should come up affecting the playground or vacant site belonging to the educational institutions and the same shall be used only for the purpose of conducting institutional activities in accordance with Rule 22 (3) of A.P. Educational Rules provided in G.O.Ms.No.524, Education, dt.20.12.98.

9. I state and submit that the Gram Panchayat, Choppadandi had also in its letter No.A/GPC/2006, dt.21.11.06 ordered that the illegally constructed shopping complex in the Mandal Parishad Primary School premises, Choppadandi be stopped immediately. I submit that despite all this, no action had been taken by the authorities and the respondents 4 and 5 have been carrying on the constructional activities with impunity. I state and submit that bringing all these facts, a letter dated 30.11.06 was addressed by the villagers of Choppadandi village to the concerned educational and revenue authorities pointing out the illegal constructions being resorted to. It was also pointed out that the two huge neem trees in the premises of the Mandal Parishad Primary School, Choppadandi, have been cut off without prior permission from the Mandal Revenue Officer and the authorities are maintaining silence in the matter though they were appraised of all the true facts. I submit that the said letter has not even evoked any response.

10. I state and submit that it is surprising that a public property is sought to be occupied and constructions raised by the self-styled school development committee and the Head Master assisting and aiding the said school committee in collusion with some outsiders who

have vested interest in creation of shopping complex in the Mandal Parishad Primary School premises, Choppadandi. It is further surprising that such complex should come up without sanction from the gram Panchayat, Choppadandi and against the express direction issued by the 1st respondent herein as well as the Director of School Education, not to make any constructions in the school premises for a purpose other than that of institutional activities. It is submitted that to the best of my knowledge, no tenders have been called for, nor any procedure followed for raising such huge constructions.

11. I may further point out that the construction of such huge complex facing the road wherein the school is situated would hamper the free flow of traffic in the area and would endanger the entry and exit points in usage. I further submit that the huge extent of area of playground is also permanently lost to the children and a host of other issues consequent to the construction of shopping complex would also crop up and create problems to the school. In any event, since the very construction is illegal and the concerned authorities have been keeping their eyes shut to such illegalities, I am filing the present writ petition. I am filing herewith two photographs showing the nature of constructions that are coming up in the area of the Mandal Parishad School, Choppadandi and the fast pace with which the constructions have been raised. Hence the writ petition.

In the counter-affidavit filed by him, Shri R. Surender Reddy, District Educational Officer, Karimnagar has averred that the application made by respondent No.4 for grant of permission to raise construction was rejected by the Director of School Education and the resolution passed by respondent No.4 on 20-3-2006 for raising construction at the disputed site was rejected, but even then, respondent Nos.4 and 5 are constructing shopping complex. He has also referred to proceedings No.6664/E7/2005, dated 2-2-2007 issued by the department whereby respondent No.5 was suspended from the post of Head Master. Along with his affidavit, Shri R. Surender Reddy has filed several documents including communication dated 28-10-2006 sent by Mandal Education Officer, MP, Choppadandi to the District Educational

Officer, Karimnagar pointing out the construction of shopping complex in violation of the direction given by the superior authorities, letter dated 21-11-2006 sent by Panchayat Secretary, Gram Panchayat, Choppadandi to respondent No.5. A copy of order dated 2-2-2007 vide which respondent No.5 was placed under suspension has also been placed on record.

We have heard learned counsel for the parties. At the outset, we may mention that Shri B. Vijaya Bhasker, learned counsel for respondent No.4 made a request for adjournment for enabling his client to file counter-affidavit, but his request was declined because on 19-2-2007, two weeks' time was already granted to respondent No.5 for the purpose of filing the counter-affidavit and as on today, a period of more than one month has elapsed but no counter-affidavit has been filed.

Shri P. Sridhar, learned counsel for the petitioner reiterated that the construction of shopping complex in the area earmarked for playground of the school is not only violative of the provisions contained in the Andhra Pradesh Education Act, 1982 and the Rules framed thereunder, but is highly detrimental to the interest of the students because they will be permanently deprived of the playing area. He submitted that the shopping complex will become a nuisance for the entire student community and will adversely affect their studies. Learned counsel emphasised that the construction in question is being raised despite the unequivocal rejection of the proposal by the Director of School Education, the District Educational Officer and the Panchayat Secretary. He submitted that the obstinate attitude adopted by respondent Nos.4 and 5 in the matter of construction of shopping complex shows that they do not have any respect for the direction given by the superior authorities and are acting at the behest of some property dealer.

Learned Government Pleader supported the arguments of the learned counsel for the petitioner and submitted that the construction of shopping complex in the area earmarked for playground is wholly illegal.

Learned counsel for respondent No.4 could not put forward any tangible argument to justify the construction of shopping complex in the area earmarked for playground or the contemptuous attitude adopted by respondent Nos.4 and 5 qua the direction given by the Director of School Education.

We have considered the entire matter. In our opinion, construction of the shopping complex on the land earmarked for playground is per se illegal and the action of respondent Nos.4 and 5 is tainted by mala fides. The manner in which the two respondents have proceeded with the construction of the shopping complex speaks volume of their contempt for the prohibition imposed by the State Government vide G.O.Ms.No.524, dated 20-10-1998 against the use of premises of the educational institution or building or playground or vacant site for any other purpose. Not only this, respondent No.5 is guilty of gross insubordination. He brazenly ignored the direction given by the higher authorities. Once the Director of School Education rejected the proposal of respondent Nos.4 and 5 for grant of permission to raise construction, the latter should have kept their hands off from undertaking the construction of shopping complex, but in complete disregard of the directions given by the superior authorities, the two respondents have accelerated the construction of shopping complex. If they are not prevented from continuing the construction activity, the students of the school will be deprived of their legitimate right to use the playground. Not only this, the shopping complex will become a permanent source of nuisance for the students in general and the girl students in particular. This will also adversely affect their studies.

For the reasons stated above, the writ petition is allowed. Respondent Nos.1 and 2 are directed to take active steps to demolish the construction so far made in the area earmarked for playground. The costs of demolition should be recovered from respondent Nos.4 and 5 who shall also pay costs

of Rs.50,000/- in equal shares. The amount of costs shall be deposited in the school fund and shall be used for the benefit of the children.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP No.34088 of 2006 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

23rd March, 2007
svs